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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Colusa)

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE DAVID RANKIN,

Defendant and Appellant.

C044998

(Super. Ct. No.
CR42863)

Defendant George David Rankin was convicted after a jury trial of being a convicted felon in possession of a firearm (Pen. Code, § 12021, subd. (a)(1)) and ammunition (Pen. Code, § 12316, subd. (b)(1)). The trial court sentenced defendant to an aggregate term of two years eight months in state prison. Defendant's sole contention on appeal is that the trial court erred in permitting an officer to vouch for the credibility of a witness. We affirm.

BACKGROUND

On January 2, 2003, officers served a search warrant at defendant's parents' house in Grimes. The officers had received information that defendant possessed firearms and ammunition at

that location. Defendant had been convicted of a felony in 2001.

During the search, the officers asked defendant's father where defendant "stayed when he was present," and the father directed them to a bedroom. In the bedroom, officers found several boxes of live firearm ammunition; gun parts, including stocks, barrels, and magazines; and a .22-caliber revolver. The revolver was inoperable. Also in the bedroom were several items of mail addressed to defendant as well as his Colusa County Jail wristband.

In the loft of the garage/shop, officers found a plywood crate with a false bottom concealing three AR-15 upper receivers. The crate also contained live ammunition. Defendant's father indicated the crate was not his. There were additional firearms in the loft that were not seized because they belonged to defendant's father.

Defendant's father, who is exceptionally hard of hearing, testified that as of the day the officers served the search warrant, he had not seen defendant in "a couple, three weeks." At that time, defendant no longer lived at his father's house and no longer stayed in that bedroom overnight. The officers asked him where defendant "had been staying originally," and he "told [them] where his [old] room was, that he no longer used it, but that had been his room." He also told the officers that he had been picking things up around the house and putting them in that room because defendant was using it to "store his stuff in." He denied owning the .22-caliber revolver found in the

bedroom but recalled that defendant had acquired one like it seven or eight years earlier. He had last seen defendant with the revolver a couple of years before trial -- prior to defendant's felony conviction. He had not seen defendant in possession of any guns since the conviction.

Defendant's father claimed he owned the three AR-15 upper receivers found in the crate, as he had told defendant he was going to "confiscate" whatever items defendant had in the garage as "collateral" for money defendant owed him. That occurred around the time of defendant's felony conviction, and his father had not seen him go up to the loft in the garage since.

Justin Thompson testified that he met defendant sometime in early 2002 while both men were inmates at the county jail. After they were both released, Thompson visited defendant several times at defendant's parents' house. On one occasion, defendant went up to the loft in the garage and returned with "part of a gun," which Thompson described as consistent with an upper receiver and having prongs and a sight. On another occasion, while in defendant's bedroom at defendant's parents' house, defendant showed Thompson a handgun, saying it was a "Colt .45." On yet another occasion, while at the house of a mutual acquaintance, Robert Munro, Thompson saw defendant with what appeared to be parts of a gun to sell and a bulletproof vest. Thompson admitted he was a paid informant for the narcotics team and his targets included Robert Munro.

Defendant's mother testified that defendant had not lived at her house for almost two years at the time of trial.

Defendant visited sporadically and would pick up his mail and messages, but he did not spend the night. She had not seen defendant with a firearm of any kind since his felony conviction.

Defendant's girlfriend testified they had spent every night together since September of 2002, and not one of those nights was at his parents' house. She also had never seen defendant in possession of firearms.

Robert Munro testified that Thompson had never been at his house, or anywhere else with him, when defendant was present. He also testified that defendant never came to his house with gun parts to sell or a bulletproof vest. Munro was serving a five-year felony prison sentence as a result of information provided by Thompson.

Colusa County Deputy Sheriff Kevin Erdelt, a narcotics task force member, testified Thompson had worked as a police informant on controlled drug purchases from December 2002 through February 2003 and had made approximately 30 to 40 buys from 21 different people. During that time, Erdelt received information from Thompson that defendant possessed military assault-type weapons. Erdelt, however, did not recall Thompson's describing prongs or a sight on the end of an apparent gun barrel.

DISCUSSION

Defendant contends the trial court erred in permitting Deputy Erdelt to vouch for the credibility of informant and witness Justin Thompson. We disagree.

"Lay opinion about the veracity of particular statements by another is inadmissible on that issue. As the Court of Appeal recently explained [citation], the reasons are several. With limited exceptions, the fact finder, not the witnesses, must draw the ultimate inferences from the evidence. Qualified experts may express opinions on issues beyond common understanding (Evid. Code, §§ 702, 801, 805), but lay views on veracity do not meet the standards for admission of expert testimony. A lay witness is occasionally permitted to express an ultimate opinion based on his perception, but only where 'helpful to a clear understanding of his testimony' [citation], i.e., where the concrete observations on which the opinion is based cannot otherwise be conveyed. [Citations.]" (*People v. Melton* (1988) 44 Cal.3d 713, 744; see also *People v. Sergill* (1982) 138 Cal.App.3d 34, 39-40 [lay opinion of officer regarding victim's truthfulness inadmissible].)

Thompson, the drug informant who told officers that defendant possessed firearms, testified at trial regarding separate instances during which he observed defendant with firearms. When defense counsel called Deputy Erdelt as a witness, Erdelt testified he had used Thompson as an informant in drug cases and that Thompson had told him about defendant's assault weapons.

On cross-examination, the prosecutor asked Deputy Erdelt, "[D]uring the course of your employment of Justin Thompson, did he ever give you any indication that he was not telling the truth?" Defense counsel objected as irrelevant and as calling

for improper "vouch[ing]." The trial court overruled his objection. The prosecutor then repeated the question to the witness as follows: "Did Mr. Thompson ever give you any reason to make you believe he was not telling the truth?" Erdelt responded, "No." Defense counsel later attempted to discredit that testimony by pointing out that Thompson had been unable to identify people he had purchased drugs from in the past.

The trial court correctly overruled defense counsel's objection. Here, Deputy Erdelt said Thompson gave him no reason to make him doubt his veracity. In so testifying, the deputy did not vouch for Thompson's veracity or state an opinion as to whether Thompson was telling the truth. Instead, he merely conveyed to the jury that there was no additional information about Thompson's conduct or demeanor that caused Erdelt to disbelieve him. The question, as posed and answered, merely avoided a long, drawn-out examination by the prosecutor about such things as whether Thompson avoided eye contact, fidgeted, had previously been caught lying, or gave conflicting or implausible information. Thus, contrary to defendant's assertion on appeal, Erdelt's testimony did not suggest that Erdelt had evidence not presented to the jury but, rather, suggested there was no additional evidence the jury did not have.

The jurors were instructed that they were "the sole judges of the believability of a witness and the weight to be given the testimony of each witness" and were able to assess Thompson's credibility for themselves at trial. Deputy Erdelt's testimony

did not purport to give a lay or expert opinion as to the veracity of Thompson's statements or otherwise place the "prestige of the government" behind Thompson.

DISPOSITION

The judgment is affirmed.

RAYE, J.

We concur:

BLEASE, Acting P.J.

NICHOLSON, J.